

THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE ARIZONA TAX COURT

TX 2019-000011

02/05/2020

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT
D. Tapia
Deputy

STATE OF ARIZONA, et al.

BRUNN W ROYSDEN III

v.

ARIZONA BOARD OF REGENTS, et al.

BRETT W JOHNSON

JOSEPH S KIEFER
SHANE R SWINDLE

MINUTE ENTRY

East Court Building – Courtroom 612

2:34 p.m. This is the time set for Oral Argument on Defendants' Motion for Award of Attorneys' Fees and Costs, filed December 23, 2019 and Plaintiff's Notice of Lodging Proposed Final Judgment, filed December 24, 2019. Plaintiff State of Arizona is represented by Assistant Attorney General Brunn W. Roysden, III. Defendant Arizona Board of Regents is represented by counsel, Brett W. Johnson, Joel W. Nomkin, Austin C. Yost and John P. Creer.

Court reporter Tanya McCowam is present.

A record of the proceedings is also made digitally.

The parties notify the Court that they are in agreement to the form of Judgment submitted on December 24, 2019.

Oral argument is presented.

Based upon matters presented,

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IT IS ORDERED as follows:

1. Taking Defendants' Motion for Award of Attorneys' Fees and Costs, filed December 23, 2019 under advisement.
2. Based upon stipulation of the parties, the Court will signs the Judgment submitted by the parties on December 24, 2019.

2:45 p.m. Matter concludes.

LATER:

The Court has Defendants' Motion for Award of Attorneys' Fees and Costs, filed December 23, 2019, and fully briefed as of January 28, 2020. Also pending is Plaintiff's Notice of Lodging Proposed Final Judgment, filed December 24, 2019, and fully briefed as of January 13, 2020. In their response in opposition to the Plaintiff's proposed form of judgment, Defendants propose their own form of judgment.

Costs

The State's liability for costs is conceded.

ACCORDINGLY, it is ordered awarding Defendant its taxable costs in the amount of \$2,356.62.

Fees

In pertinent part, A.R.S. § 12-348.01 provides:

... if an agency ... files a lawsuit against ... (a) board or commission of this state,
... governmental officer acting in the officer's official capacity ... the court shall
award reasonable attorney fees to the successful party in the action.

There is no dispute that Plaintiff is an "agency" represented by a "governmental officer acting in the officer's official capacity" and Defendants are a state agency and another "governmental officer acting in the officer's official capacity." There is no dispute that Defendants are the successful party as that term is used in A.R.S. § 12-348.01. The only real dispute is whether the requested fees are reasonable.

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Once a party requesting attorneys' fees under A.R.S. § 12-348.01 establishes an entitlement to fees, the burden shifts to the party opposing the fee request to demonstrate the impropriety or unreasonableness of the requested fees. *City of Tempe v. State*, 237 Ariz. 360, 351 P.3d 367 (App. 2015). “[A]n opposing party does not meet [that] burden merely by asserting broad challenges to the application. It is not enough ... simply to state, for example, that the hours claimed are excessive and the rates submitted too high.” *State ex rel. Corbin v. Tocco*, 173 Ariz. 587, 594, 845 P.2d 513, 520 (App.1992).

A. Separate Work on Behalf of Mr. Creer

The Court begins by noting that the State chose to include Mr. Creer as a separate defendant. Although Mr. Eckstein and his team must have worked closely with Mr. Johnson and his team, each was bound to his own client. There is no basis for denying either firm its full fee just because both clients’ interests aligned, as long as the amount billed each client reflects the reasonable value of the service rendered.

B. Hourly Rate

The Plaintiff’s argument that the hourly rate paid to Defendants’ counsel was excessive also fails, even under the standard urged by Plaintiff. An award of fees should reimburse the attorney for his or her legal training and knowledge as it relates to the legal services rendered on behalf of a particular client. *Ahwatukee Custom Estates Management Ass’n, Inc. v. Bach*, 193 Ariz. 401, 973 P.2d 106 (1999). That an Arizona State Bar survey reveals that the rates charged by the attorneys in this case were much greater than average is not persuasive. The skill, experience and background of the defense lawyers in this case was far, far above average. In fact, they are at or near the top of the bar.

Plaintiff acknowledges that the constitutional law issues involved in this case were novel and complex. In determining the amount of reasonable attorney's fees to be awarded to the successful party, the trial court may consider the novelty of the legal question presented. *Rowland v. Great States Ins. Co.*, 199 Ariz. 577, 20 P.3d 1158 (App. Div.2 2001).

C. Number of Hours Billed

The prevailing party on appeal is “entitled to recover a reasonable attorney's fee for every item of service which, at the time rendered, would have been undertaken by a reasonable and prudent lawyer to advance or protect his client's interest in the pursuit” of a successful appeal. *Twin City Sportservice v. Charles O. Finley & Co.*, 676 F.2d 1291, 1313 (9th Cir.), *cert. denied*, 459 U.S. 1009, 103 S.Ct. 364, 74 L.Ed.2d 400 (1982). Plaintiff points to no specific service or time spent by defense counsel which was not necessary or prudent.

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The case management plan put into effect very early in this case was specifically designed to compact the work to be done. It was a sprint, not a marathon. As such, it is not surprising that a great number of hours were billed in a short time, and by a large team of attorneys.

ACCORDINGLY, it is ordered awarding Defendants \$979,758.00 in fees and \$2,356.62 in taxable costs.